

General Information Letter: Treatment of Qualified Subchapter S Subsidiaries.

February 26, 1998

Dear:

This is in response to your letter dated February 16, 1998, in which you request a letter ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you have stated the following:

We are representing a corporate client that is electing subchapter S status for 1998. As permitted by Internal Revenue Code § 1361, our client has elected qualified Subchapter S subsidiary (QSSS) status for a subsidiary it owns. Federally, the QSSS is not treated as a separate corporation and all the assets, liabilities, and items of income, deduction and credit of the subsidiary are treated as the assets, liabilities, and income, deductions, and credit of the parent S corporation.

In conjunction with the Federal election, we wish to comply with the requirements imposed by the State of Illinois to insure like-kind treatment at the state level. In this instance, only the QSSS is doing business in your state. Consequently, we respectfully request either written or verbal communication detailing your State's treatment of the QSSS.

### **Ruling**

Section 1501(a)(28) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 et seq.) provides:

The term "Subchapter S corporation" means a corporation for which there is in effect an election under Section 1362 of the Internal Revenue Code . . .

Section 1362 of the Internal Revenue Code permits a "small business corporation" to elect taxation as a Subchapter S corporation. The term "small business corporation" is defined in Section 1361(b) of the Internal Revenue Code, which provides, in part:

(3) TREATMENT OF CERTAIN WHOLLY OWNED SUBSIDIARIES.-- (A) IN GENERAL.--For purposes of this title--

(i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and

(ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

(B) QUALIFIED SUBCHAPTER S SUBSIDIARY.--For purposes of this paragraph, the term "qualified subchapter S subsidiary" means any domestic corporation which is not an ineligible corporation (as defined in paragraph (2)), if--

(i) 100 percent of the stock of such corporation is held by the S corporation, and

(ii) the S corporation elects to treat such corporation as a qualified subchapter S subsidiary.

Section 102 of the IITA provides:

Except as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year.

Section 1501(a)(4) of the IITA provides:

The term "corporation" includes associations, joint-stock companies, insurance companies and cooperatives. Any entity, including a limited liability company formed under the Illinois Limited Liability company Act, shall be treated as a corporation if it is so classified for federal income tax purposes.

Pursuant to Section 1361(b)(3) of the Internal Revenue Code, a qualifying Subchapter S subsidiary ("QSSS") is not a separate corporation, but rather is defined to be a part of its parent Subchapter S corporation for all purposes of the Internal Revenue Code. Because this definition is expressly adopted by the IITA, a QSSS is not a separate corporation for Illinois income tax purposes. Instead, the QSSS is by definition part of its parent Subchapter S corporation, and its assets, liabilities, and items of income, deduction, and credit must be included with the assets, liabilities, and items of income, deduction, and credit of its parent Subchapter S corporation in determining the Illinois income tax liabilities of the parent and its shareholders.

A Subchapter S corporation and any QSSS it owns must therefore file an Illinois income tax return as a single corporation and include all items of income, deduction and credit of the parent and the QSSS in the return. No separate election is required for Illinois purposes.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200. Please note, however, that a PLR cannot apply the law to a hypothetical situation and a PLR is not binding with respect to a statement of facts which is incomplete or incorrect.

Sincerely,

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